

STATE OF MICHIGAN
COURT OF APPEALS

MAURICE ANDERSON,

Plaintiff-Appellee,

v

COUNTY OF JACKSON,

Defendant-Appellant.

UNPUBLISHED

January 27, 2004

No. 243493

Jackson Circuit Court

LC No. 02-001791-CH

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting plaintiff relief, pursuant to MCR 2.612, from a January 30, 2002, judgment of foreclosure upon plaintiff's property. The dispositive issue in this case is whether plaintiff could file an independent action for relief from judgment under MCR 2.612. We reverse.

This Court reviews a trial court's decision to grant relief from judgment under MCR 2.612 for an abuse of discretion. *Detroit Free Press, Inc v State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999).

Pursuant to MCR 2.612(C)(3), a court may entertain an independent action to relieve a party from a judgment. In *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 589; 644 NW2d 54 (2002), we set forth the circumstances under which such an independent action for relief from judgment could be maintained:

(1) The judgment is one that ought not, in equity and good conscience, be enforced, (2) there is a valid defense to the alleged cause of action on which the judgment is founded, (3) fraud, accident, or mistake prevented the defendant from obtaining the benefit of the defense, (4) there is no negligence or fault on the part of the defendant, (5) there is no adequate remedy available at law.

Defendant argues that plaintiff's case should have been dismissed because, pursuant to MCL 211.78k(7), plaintiff's remedy upon entry of the judgment of foreclosure was to file an appeal within twenty-one days. Defendant also argues that pursuant to MCL 211.78l, plaintiff may not bring an action for possession of property against the subsequent owner, but may only seek to recover monetary damages by filing an action in the Court of Claims. The foregoing statutes provide as defendant indicates; however, neither in the trial court nor in this Court does

defendant connect its argument that plaintiff had alternative remedies to the argument that because plaintiff had alternative remedies, he could not maintain an independent action under MCR 2.612. Indeed, nowhere in defendant's brief is there a discussion of MCR 2.612, or of the dispositive opinion in *Trost, supra*. Nevertheless, we conclude that defendant has minimally raised this argument below¹ and before this Court, and because it is an issue of law, given the undisputed facts in this record, we will address the argument. *Stewart v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

As previously noted, one of the requirements to maintain an independent action under MCR 2.612(C)(3) is that there is no other adequate remedy at law available to the plaintiff. *Trost, supra*. Here, plaintiff had available several alternative remedies upon which to challenge the judgment of foreclosure on his property. Plaintiff could have either filed an appeal within twenty-one days pursuant to MCL 211.78k(7), or filed an independent action in the Court of Claims pursuant to MCL 211.78l. Additionally, plaintiff could have pursued a motion for relief from judgment under MCR 2.612(C)(1) before the initial circuit judge that entered the judgment of foreclosure. Because plaintiff had these alternative remedies available to him, he could not as a matter of law maintain a separate independent action under MCR 2.612(C)(3). *Trost, supra*.²

Reversed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

¹ The only reference to the finality of the judgment made by defendant below was in its answer to the motion for relief from judgment. That reference was that "[t]his judgment was entered pursuant to Public Act 123 of 1999 as amended. This Judgment was not objected to or appealed by the Plaintiff within the required time period *set by the Michigan Court Rules* and is final." (Emphasis added.) Defendant's answer to the amended motion does not contain any statement regarding the finality of the judgment.

² Although plaintiff was unrepresented at the time that he filed this second action under MCR 2.612, we have previously noted that an appearance in propria persona does not excuse a party from following the court rules. *Bachor v Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973).